Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

IN RE: WILLIAM H. FORMAN, JR.

Petition for a Writ of Certiorari to the Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

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73 pp

QUESTIONS PRESENTED

The Disciplinary Board of the Louisiana State Bar Association issued a letter of public reprimand to William H. Forman, Jr., on June 12, 1990, which in part specified that he charged an unreasonable law fee:

1. Does the Board's lack of specificity and failure to mention any factors that led to its decision result in the said letter's being so vague that it is unconstitutional?

2. Does the suspension later imposed on Mr. Forman by the Louisiana Supreme Court constitute a penalty for his exercising his right of access to the courts?

3. Does the suspension later imposed by the Louisiana Supreme Court on Mr. Forman constitute a penalty for his exercising his constitutionally-protected property right to file an attorney's lien?

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OPINION BELOW

The opinion of the Louisiana Supreme Court in this matter is reported in 634 So. 2d 330 (La. 1994).

STATEMENT OF JURISDICTION

The judgment of the Louisiana Supreme Court denying the application for rehearing was rendered on May 12, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Article IV, § 2.1, United States Constitution, provides that:

> The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Amendment 1, Clause 6, United States Constitution, provides that:

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievance.

Amendment V, Clause 4, United States Constitution, provides that:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

Amendment XIV.1, United States Constitution, provides that:

> All persons born or naturalized in the United

> States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42. U.S.C. § 1983 provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

These proceedings followed the charging of the petitioner, William H. Forman, Jr., by the Disciplinary Counsel of the Louisiana State Bar Association. The charge contained two counts which will be hereinafter referred to as the Reed Count and the Wright Count. The Louisiana Supreme Court's opinion concluded that Mr. Forman's conduct in regard to both counts was unethical.

As will be shown, the court ignored the federal constitutional questions that were raised by Mr. Forman.

REED COUNT:

FACTUAL AND PROCEDURAL HISTORY

The factual and procedural history pertinent to this count are listed below.

1.

On August 31, 1987, Mr. Forman, the petitioner, filed a petition for community property and child support on behalf of Mrs. Henrietta Vallery Reed. The case was titled *Joseph Vallery, Jr. v. Henrietta Smith Vallery,* State of Louisiana, Orleans Parish Civil District Court No. 77-4448. The estimated value of Mrs. Reed's portion of her former husband's retirement pay was $178,000. According to Louisiana law, the said retirement pay is community property.

2.

In connection with his being retained by Mrs. Reed, Mr. Forman sent a memorandum to her which stated the following:

> This is to notify you that my hourly fee for professional services is $70.00 per hour. Also, all checks received pursuant to a judgment resulting from litigation shall be sent to me for distribution. Please contact me if you have any questions.

3.

On November 23, 1988, Mr. Forman obtained a judgment

from the Orleans Parish Civil District Court for past child support for Mrs. Reed and attorney's fees in the amount of $1,000.00.

4.

After obtaining back child support for Mrs. Reed, Mr. Forman was prepared to bring a motion for summary judgment for Mrs. Reed's portion of her former husband's retirement pay, which is community property, and to have an increased rate of child support established. Mrs. Reed terminated the attorney-client relationship with Mr. Forman prior to his obtaining her portion of the community property and an increase in child support. Mr. Forman then sent Mrs. Reed his statement for the amount of $6,513.

5.

As a result of Mrs. Reed's complaint, a hearing on this matter was held before the Committee on Professional Responsibility of the Louisiana State Bar Association (C.O.P.R.) on October 12, 1989. During the hearing Mr. Forman introduced sixty-three exhibits related to his efforts on behalf of Mrs. Reed. On June 12, 1990, a letter of public reprimand was issued to Mr. Forman by C.O.P.R. (Appendix F, 38a). The second paragraph of the said letter stated "that in your capacity as Attorney at Law, you (Mr. Forman) were retained to represent the interests of Henrietta Vallery Reed in a matter involving child support. " Among other things, the letter declared that Mr. Forman charged an excessive law fee. The amount that was excessive was not specified.

6.

On May 10, 1990, Mr. Forman brought an action against Mrs. Reed in First City Court, City of New Orleans, State of Louisiana, No. 9052806, for the amount of $3,185 while the appeal of the said letter of public reprimand was still pending before the Louisiana Supreme Court.

7.

On September 14, 1990, the Louisiana Supreme Court denied reconsideration of the said letter of public reprimand to Mr. Forman.

8.

On October 17, 1990, pursuant to Mr. Forman's motion, the action against Mrs. Reed in the First City Court was voluntarily dismissed. Mrs. Reed's reconventional demand against Mr. Forman is still pending. This motion was filed during the ninety day time period for filing a petition for writ of certiorari to the United States Supreme Court.

9.

Pursuant to a charge that Mr. Forman brought the said action against Mrs. Reed in bad faith (Appendix E, 35a), a hearing was held before the Hearing Committee of the Disciplinary Board of the Louisiana State Bar Association, C.O.P.R.'s successor, on July 24, 1991. The Hearing Committee concluded that no misconduct occurred.

10.

The Disciplinary Board, however, later concluded that Mr. Forman's bringing the said action against Mrs. Reed was in bad faith and that misconduct, therefore, occurred in violation of Rule 3.1 of the L.S.B.A's Rules of Professional Conduct (Appendix G, 44a-45a).

11.

On October 4, 1993, Mr. Forman filed a motion for new

hearing and supporting brief based on newly discovered evidence to the Louisiana Supreme Court in connection with the said letter of public reprimand (Appendix F, 38a) that was issued to him on June 12, 1990. The motion was denied. A motion to reconsider the motion for new hearing and supporting brief were filed by Mr. Forman to the same Court during February, 1994. The Louisiana Supreme Court's opinion of March 18, 1994, does not refer to the motion to reconsider the motion for new hearing.

12.

The Louisiana Supreme Court affirmed the Disciplinary Board's conclusion on March 18, 1994. Application For Rehearing was denied on May 12, 1994 (Appendix A, 1a). The Chief Justice dissented and would have granted the rehearing.

REASONS FOR GRANTING THE WRIT

I.

VAGUENESS OF THE LETTER OF PUBLIC REPRIMAND: REED COUNT

As mentioned, on June 12, 1990, the Committee of Professional Responsibility (C.O.P.R.) issued a letter of public reprimand to Mr. Forman. *See* Appendix F, 38a. Among other things, the letter charged that Mr. Forman charged an excessive legal fee. The amount that was excessive was not specified.

To reiterate, on May 10, 1990, Mr. Forman brought an action against Mrs. Reed for uncollected legal fees in the amount of $3,185. Pursuant to Mr. Forman's motion, the action was voluntarily dismissed on October 17, 1990. The Disciplinary Counsel of the Louisiana State Bar Association (L.S.B.A.) later brought a charge against Mr. Forman alleging that his lawsuit against Mrs. Reed was brought in bad faith.

C.O.P.R.'s said letter of public reprimand to Mr. Forman did not discuss any of the following factors mentioned in Rule 1.5 of the L.S.B.A.'s Rules of Professional Conduct:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The time limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

C.O.P.R.'s said letter of public reprimand to Mr. Forman also did not show any relationship between the amount of his fee and the value of Mrs. Reed's communal property right to her former

husband's retirement pay as was done in *In re Lockyear,* 305 N.E. 2d 440 (Ind., 1974). In that case, the Indiana Supreme Court held that "a fee approximately twenty per cent of the recovery on behalf of wife in a divorce case could not be considered 'clearly excessive,' " 7 C.J.S., *Attorney and Client*, § 56, p. 929; 305 N.E. 2d 447. In addition, the court held that "charging a client in a divorce action a fee in addition to or in excess of fee allowed client by the court could not be considered unethical where attorney felt his services had not been sufficiently compensated by court-allowed fee." 7 C.J.S., *Attorney and Client*, § 56. p. 929; 305 N.E. 2d 447.

In the case at bar, to reiterate, the potential amount of recovery for Mrs. Reed for her portion of her husband's pension was estimated to have a value of $178,000. No contradictory evidence was ever introduced on this point. Using the *Lockyear* case's twenty per cent test, a fee of $35,600 would not be excessive after obtaining a judgment for community property for Mrs. Reed. Thus, it follows that the amount initially demanded by Mr. Forman – $6,513 – and the amount for which Mr. Formon sued Mrs. Reed – $3,185 – were not excessive fees.

In addition, the 1990 letter of public reprimand to Mr. Forman did not specify the amount by which his fee was excessive. Thus, it is submitted that the said reprimand was unconstitutionally vague.

In *Grayned v. City of Rockford,* 408 U.S. 104, 33 L. Ed. 2d 222, 227-228, 92 S. Ct. 2294 (1974), the United States Supreme Court set forth the following tests for unconstitutional vagueness:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer

> between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked.

As mentioned, C.O.P.R.'s said 1990 letter of public reprimand to Mr. Forman did not specify the amount by which his fee was excessive. Put another way, the letter's prohibition was not clearly specified. Yet, this vague letter was the grounds for further action by the Disciplinary Counsel against Mr. Forman after he brought an action against Mrs. Reed for uncollected legal fees. That further action against Mr. Forman alleged that he brought the suit in bad faith. Yet C.O.P.R. and the Louisiana Supreme Court did not establish any kind of test for the amount of fee in a divorce and community property partition case. In contrast, the Indiana Supreme Court in the *Lockyear* case established a twenty per cent of recovery test for legal fees in a divorce and property settlement case.

In *Goldfarb v. Virginia State Bar,* 421 U.S. 773, 44 L. Ed. 2d 572, 95 S. Ct. 2004 (1975), this Court held that minimum fee schedules violated the Sherman Act. It is submitted that the *Goldfarb* doctrine should be extended to prohibit any vague attempts by bar associations to put unspecified ceilings on legal fees. It is again, therefore, submitted that the said letter of public reprimand to Mr. Forman was unconstitutionally vague. Thus, the said letter of public reprimand and the Disciplinary Counsel's Reed Count alleging that Mr. Forman brought a lawsuit against Mrs. Reed in bad faith should both be dismissed.

II.

ACCESS TO COURTS DENIED: REED COUNT

As mentioned, the Disciplinary Board of the Louisiana State Bar Association concluded that Mr. Forman's bringing the said action against Mrs. Reed was in bad faith and that misconduct, therefore, occurred in violation of Rule 3.1 of the L.S.B.A's Rule of Professional Conduct (Appendix E, 44a-45a). The Louisiana Supreme Court affirmed the Disciplinary Board's conclusion (Appendices A and B, 1a-4a).

Mr. Forman's action against Mrs. Reed covered the two phases of his case on her behalf that had not been adjudicated: the community property settlement and the effort to collect after the said judgment for child support was rendered. In addition, his claim for fees was reduced by him to $3,185.00, because of C.O.P.R.'s said letter of public reprimand to him.

In order to end this matter, a Motion and Order for Voluntary Dismissal, Without Prejudice, were filed and the Order was signed by the judge in *Forman v. Reed,* First City Court No. 90-52806 on October 17, 1990. Mrs. Reed's reconventional demand against him, however, has not been dismissed. The case is, therefore, still pending since she has chosen to continue it.

It is contended that the suspension imposed upon Mr. Forman is unconstitutional in that it penalizes him for exercising his right of access to the courts, thereby violating Section 22 of Article 1 of the Louisiana Constitution of 1974. The suspension is penalizing him for exercising his right to bring an action in court to collect from Mrs. Reed for services rendered in connection with the already mentioned community property settlement and collection phases of her case. The said Section 22 in part states that "all courts shall be open, and every person shall have an adequate remedy by due process of law and justice."

In *Ryland v. Shapiro,* 708 F.2d 967 (5th Cir. 1983), the United States Court of Appeals, Fifth Circuit, in its opinion stated that interfering with one's access to the courts violated Article IV, Amendments I and XIV and the due process clause of the United States Constitution, 708 F.2d 971-972. On the right of access of prisoners to the courts, *also see Johnson v. Avery,* 393 U.S. 483, 21 L. Ed. 2d 718, 721 (1969); *Hudson v. Palmer,* 468 U.S. 517, 82 L. Ed. 2d 393, 401(1984) and *Williams v. Lane,* 851 F.2d 867 (7th Cir. 1988). Surely, if prisoners have access to the courts as is shown in the said cases, a lawyer has access to the courts to clear his name of a public reprimand in a fee matter as in *Forman v. Reed.* Thus, the suspension imposed on Mr. Forman by the Louisiana Supreme Court constitutes a denial of his right of access to the courts.

WRIGHT COUNT:

FACTUAL AND PROCEDURAL HISTORY

The factual and procedural history pertinent to this count are listed below.

1.

On November 6, 1987, in the *Succession of Lewis Alfred*

Wright, State of Louisiana, 24th Judicial District Court No. 342-889, Judgment Of Possession was rendered recognizing and distributing Mr. Wright's property to his heirs, including Luitgardis Marie Tell Wright, the executrix. Mr. Forman, and Robert C. Evans served as the attorneys for the said succession.

2.

A fee dispute followed and on January 5, 1988, Mrs. Wright wrote a letter to Mr. Forman requesting the return of her papers.

3.

On January 18, 1988, Mr. Forman wrote a letter to Mrs. Wright, which in part stated: "In reply to your recent letter, it is customary to return such property in person. Have your attorney or representative contact me."

4.

On January 20, 1988, Mrs. Wright wrote a letter of complaint about Messrs. Evans' and Forman's holding her papers to the Louisiana State Bar Association (L.S.B.A.).

5.

On February 10, 1988, a Notice of Privilege or lien of Robert C. Evans on the property mentioned in the Judgment Of Possession in the *Succession of Lewis Alfred Wright* was filed in the office of the Clerk of Court for Jefferson Parish, State of Louisiana. The Judgment Of Possession included the papers requested by Mrs. Wright.

6.

On February 18, 1988, an action titled *Law Office Of Robert C. Evans v. Mrs. Lewis A. Wright,* State of Louisiana, Parish of

Jefferson, First Parish Court No. 82367, was filed in the office of the Clerk of Court. The amount of the lawsuit was $1,887.50 for unpaid legal fees.

7.

In her letter, dated March 24, 1988, Anne LaCour Neeb, Assistant Counsel to the L.S.B.A.'s Committee on Professional Responsibility (C.O.P.R.), stated that the Committee determined "that there is not sufficient evidence to support Mrs. Wright's allegations of unethical conduct" and the matter was accordingly closed.

8.

On October 19, 1988, Frank Sloan filed a lawsuit against Mr. Forman and The Home Insurance Company, State of Louisiana, Orleans Parish Civil District Court No. 88-20459, for professional malpractice. The petition contained twenty-one paragraphs. Paragraph XVIII mentioned the refusal to return to Mrs. Wright stock certificates, automobile title and the lien on her house. The case is still pending.

9.

In his Answer To Petition, dated March 3, 1989, Mr. Forman's attorney, Walter F. Marcus III, correctly stated the following in his answer to Paragraph XVIII: "Defendants admit that Mr. Evans has possession of the stock certificates and the title to her car but deny the remaining allegations of paragraph XVIII in plaintiff's petition."

10.

During the summer of 1988 Mr. Evans moved to another

office and the Wright Succession's file went with him. Mr. Forman did not move to Mr. Evans' new office. Mrs. Wright's documents were voluntarily returned by Mr. Evans to Mrs. Wright during the fall of 1988.

11.

Pursuant to the same charge that had previously been closed, the Hearing Committee of the Disciplinary Board of the Louisiana State Bar Association held a hearing on July 24, 1991. The Committee held that Mr. Forman's holding Mrs. Wright's documents pursuant to a lien constituted unethical conduct.

12.

The Disciplinary Board later affirmed the Hearing Committee's finding that Mr. Forman had violated Rules 1.15(b) and 1.16(d) of the L.S.B.A.'s Rules of Professional Conduct (Appendix G, 41a-44a).

The Louisiana Supreme Court affirmed the Disciplinary Board's conclusion on March 18, 1994. Application For Rehearing was denied on May 12, 1994. The Chief Justice dissented and would have granted the rehearing.

REASON FOR GRANTING THE WRIT

I.

CONSTITUTIONALLY PROTECTED LIEN RIGHT: WRIGHT COUNT

The Louisiana Supreme Court's opinion stated that Mr. Forman failed to return Mrs. Wright's papers and stocks. Those documents had been given to Mr. Forman by Mrs. Wright in

connection with her late husband's succession. The opinion failed to mention that the Law Office of Robert C. Evans filed a privilege or lien on Mrs. Wright's property for unpaid legal fees at the office of the Clerk of Court of Jefferson Parish. Mr. Evans' office also brought an action against Mrs. Wright for the unpaid legal fees.

In 1988 when the dispute with Mrs. Wright began, LSA-R.S.9:5001 stated the following: "A special privilege is hereby granted to attorneys at law for the amount of their professional fees on all judgments obtained by them, and on the property recovered thereby, either as plaintiff or defendant, to take rank as a first privilege thereon."

Article 3186 of the Louisiana Civil Code states that a "privilege is a right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages." *Black's Law Dictionary* (1979), p. 832, in defining lien states the following: "Roman or Civil Law. The peculiar securities which, in the common and maritime law and equity, are termed 'liens,' are embraced under the head of 'mortgage and privilege.' " Thus, it is obvious that privilege and lien have the same meaning.

Black's Law Dictionary (1979) p. 832, further defines lien as a property right. The definition of lien also states the following: "Right to retain property for payment of debt or demand." Louisiana's leading commentator on the subject of privilege, A.N. Yiannopoulos, *Property* (1991) pp. 444-447, included privileges in his book on property. Thus, it is obvious that liens and privileges are property rights.

16A C.J.S., *Constitutional Law*, § 240, p. 42, states that "as a general rule a lien once acquired is held to be a vested property right which may not be impaired by subsequent legislation." Vested property rights are protected by § 4 of Article 1 of the

Louisiana Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

7A C.J.S., *Attorney and Client*, § 390, pp. 778-779, declares that an attorney's "lien may be enforced as an incident to a proceeding brought for another purpose. So, the court may ascertain the extent of the lien and enforce it, where the attorney is brought into court, upon application of his client, to compel the attorney to turn over money or papers upon which he claims a lien, or in a suit by the attorney to recover his compensation." On attorney's keeping clients' property that is subject to a lien, *see Norrell v. Chasam*, 4 A.2d 88 (N.J. 1939); *Steiner v. Stein*, 58 A.2d 102 (Chan. Ct. N.J. 1948); *Morse v. Eighth Judicial District Court*, 195 P.2d 199 (Nev. 1948); *Upgrade Corp. v. Michigan Carton Co.*, 410 N.E. 2d 159 (Ill. App. 1980); and *Foor v. Huntington Nat. Bank*, 499 N.E.2d 1297 (Ohio App. 1986).

After the action was filed against Mrs. Wright for fees, Mr. Sloan, her attorney, would have better served his client if he had agreed to post a property bond for the amount of the lawsuit for the return of his client's documents.

Having filed a privilege or lien against Mrs. Wright's property, Rule 1.15(C) of Article XVI of the L.S.B.A's Rules of Professional Conduct, effective January 1, 1987, was followed. Rule 1.15(C) (Appendix G, 41a) states the following:

> (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

In summary, the following occurred in this matter:

1. Judgment Of Possession was obtained in the *Succession of Lewis Alfred Wright.*

2. A fee dispute followed between the Succession's executrix, Mrs. Wright, and attorneys, Messrs. Forman and Evans.

3. A privilege or lien was filed concerning the Succession's property in accordance with LSA-R.S. 9:5001.

4. The property subject to the privilege or lien was kept separate in accordance with Rule 1.15(C).

5. The L.S.B.A.'s C.O.P.R. on March 24, 1988, reached the conclusion "that there is not sufficient evidence to support Mrs. Wright's allegations of unethical conduct" and the matter was accordingly closed.

The Louisiana Supreme Court, in its opinion (Appendix B, 2a) ignored the privilege or lien that was placed on Mrs. Wright's property. This failure to recognize the privilege or lien conflicts with the practice in other jurisdictions. In such jurisdictions, an attorney, who files a privilege or lien – a constitutionally protected property right – on a client's property when there is a fee dispute with the client, may hold the said client's property in his or her possession pursuant to the said lien or privilege. The client's property in the attorney's possession is returned to the client when the client posts a property bond for the amount of the fee dispute. This practice was enunciated clearly in 7A C.J.S., *Attorney and Client,* § 390, pp. 778-779, and in the above cited cases. In addition, this Court has upheld the constitutionality of liens, *Dunbar v. New York,* 251 U.S. 516, 40 S. Ct. 250, 64 L. Ed. 384 (1920). Thus, the Wright Count against Mr. Forman should also be

dismissed as was done by the L.S.B.A.'s C.O.P.R. on March 24, 1988, when it concluded "that there is not sufficient evidence to support Mrs. Wright's allegations of unethical conduct" and the matter was accordingly closed.

CONCLUSION

Attached to Mr. Forman's Motion For New Hearing in this matter were twenty-one letters attesting to his good character. The authors of the letters were the following:

Hon. F.A. Little, Jr., Judge, United States District Court

Hon. Johnny Jackson, Jr.

Former Councilman, District E

City of New Orleans

William F. Banta, Esq.

Walter M. Barnett, Esq.

Charles A. Boggs, Esq.

Patrick D. Breeden, Esq.

C. Edgar Cloutier, Esq.

Donald O. Collins, Esq.

Mr. Laurence Eustis

Mr. Francis P. Keevers

James Ryan III, Esq.

Mr. Howard M. Schmalz

Frank J. Stich, Jr., Esq.

Walter J. Suthon III, Esq.

Horace A. Thompson III, Esq.

Jack W. Thomson, Esq.

Eugene B. Vickery, Jr., Esq.

Mr. Bryan Wagner

Hugh M. Wilkinson, Jr., Esq.

John D. Wogan, Esq.

Leonard A. Young, Esq.

Eleven of those listed testified on Mr. Forman's behalf during the hearing on July 24, 1991, and the testimony of five others was stipulated.

During the said hearing, Mr. Forman also testified as to the following:

1. That he served as chairman of the Consumer Protection Committee of the Louisiana State Bar Association, 1972-1978;

2. That he has written four articles that were published in the *Louisiana Bar Journal;* and

3. That he is a Lieutenant Colonel in the United States Air Force Reserve and was awarded the Meritorious Service Medal on July 28, 1989.

The present case offers an opportunity for this Court to save Mr. Forman from a continuing injustice and his career from irreparable harm.

As has been shown, the Louisiana Supreme Court in th;s matter ignored the United States constitutional questions raised by

Mr. Forman. In doing so, the Louisiana Supreme Court ignored decisions on federal questions rendered by this Court, United States courts of appeal, other state courts of last resort and other secondary authorities. Thus, it is submitted that the above cited L.S.B.A.'s Rules of Professional Conduct (Appendix G, 41a-45a) as applied by the Louisiana Supreme Court in this matter violated 42. U.S.C. § 1983 and the cited articles and amendments of the United States Constitution. By correcting the Louisiana Supreme Court's opinion, this Court will uphold United States constitutional rights for the rest of the nation.

Respectfully submitted,

WILLIAM H. FORMAN, JR.
Attorney for Petitioner, Pro Se
Suite 1010
228 St. Charles Avenue
New Orleans, Lousiana 70130
(504) 524-0681

APPENDIX A — REHEARING DENIED BY THE LOUISIANA SUPREME COURT; IN RE: WILLIAM H. FORMAN, JR. DATED MAY 12, 1994

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE # 057

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the *12th day of May, 1994,* the following action was taken by the Supreme Court of Louisiana in the case(s) listed below:

* * *

REHEARINGS DENIED:

* * *

93-B-2448 IN RE: WILLIAM H. FOREMAN, JR.
CALOGERO, C.J. – would grant the rehearing.
WATSON, J. – not on panel.
MARVIN, J. – ad hoc for Justice Dennis.

* * *

APPENDIX B — PER CURIAM OPINION BY THE LOUISIANA SUPREME COURT; IN RE: WILLIAM H. FORMAN, JR., NO. 93-B-2448 DATED MARCH 18, 1994

SUPREME COURT OF LOUISIANA

NO. 93-B-2448

IN RE: WILLIAM H. FORMAN, JR.

DISCIPLINARY PROCEEDINGS

PER CURIAM[1]

Respondent was charged with two counts of misconduct, including filing suit against his client for fees without a good faith basis for doing so, in violation of Rules of Professional Conduct 3.1, 3.4(c), 4.4 and 8.4(a)(c)(d); and failing to promptly deliver property to the client, which the client was entitled to receive, in violation of Rules of Professional Conduct 1.15(b), 1.16(d), 3.1, 4.4, and 8.4(a)(c).[2]

After a hearing, the Hearing Committee concluded that misconduct occurred only concerning count two, failure to return the client's property, and recommended a public reprimand.

The Disciplinary Board concluded, however, that misconduct occurred on both counts, finding violations of Rules of

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1. Judge Charles A. Marvin, Court of Appeal, Second Circuit, has been assigned as Associate Justice Pro Tempore in place of Associate Justice James L. Dennis.

2. Respondent filed an exception of res judicata concerning the second charge, which this court overrules.

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Professional Conduct 3.1, 1.15(b) and 1.16(d). The Disciplinary Board recommended a three month suspension from the practice of law, with respondent to pay the costs of the proceedings.[3]

Both respondent and disciplinary counsel filed objections to this court.

As to the suit in bad faith, the evidence established that respondent filed a suit against his former client to collect a partial fee of $3,185, after withdrawing his demand for a $5,513 fee when the former Committee on Professional Responsibility had ruled that a fee in excess of $1,000 was excessive, and after withholding virtually all of the client's first four child support payments to collect the $1,000 fee. Respondent also failed to return another client's papers and stocks, given to respondent in handling a succession, when the client refused to pay more than the originally quoted fee. Respondent kept the papers and stocks almost two years after the client demanded their return, apparently using the client's property as leverage against the client in the fee dispute, and returned them only after the client sued for their return.

Upon review of the findings and recommendations of the Hearing Committee and the Disciplinary Board, and upon consideration of the record filed herein, it is the decision of this court that the recommendation of the Disciplinary Board does not adequately reflect the seriousness of the misconduct and that respondent should be suspended for at least six months.

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3. A member of the board concurred in the finding of misconduct, but recommended a suspension of one year and one day because of respondent's "egregious actions."

WATSON, J., not on panel.

Appendix B

DECREE

Accordingly, it is ordered that William H. Forman, Jr., be suspended from the practice of law for a period of six months. All costs of this proceeding are assessed to respondent.

APPENDIX C — REPORT AND RECOMMENDATION OF THE DISCIPLINARY BOARD OF THE LOUISIANA STATE BAR ASSOCIATION FILED AUGUST 31, 1993

DISCIPLINARY BOARD OF THE

LOUISIANA STATE BAR ASSOCIATION

DOCKET NO. 91-DB-011

WILLIAM H. FORMAN, JR.

BOARD REPORT AND RECOMMENDATION

Lawyer William H. Forman, Jr., has been charged with violating various provisions of the Rules of Professional Conduct in his attempts to collect disputed fees from two former clients. In both matters Mr. Forman subordinated his duties to those clients by pursuing overly aggressive tactics to ensure his own compensation. Considering this pattern of conduct by Mr. Forman, and the fact that he has previously been reprimanded for violating a duty to one of these clients, the board recommends that Mr. Forman be suspended for three months for the violations more fully described below.[1]

Count I of the formal charges addresses Respondent's conduct during and following an investigation and decision by the Louisiana State Bar Association's Committee on Professional Responsibility ("COPR") into charges arising from Mr. Forman's representation of Henrietta Vallery Reed. The COPR concluded that matter by issuing the following reprimand:

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1. On April 23, 1990, Mr. Forman was reprimanded in yet another matter for pursuing his own interests that conflicted with his clients' interests.

Appendix C

That in your capacity as Attorney at Law, you were retained to represent the interests of Henrietta Vallery Reed in a matter involving child support. That the client's former husband was a member of the United States Marine Corps. That during the course and scope of your representation, you did obtain judgment for past due child support. Payment of past due child support was forwarded to your office via United States Treasury checks made payable to the order of Henrietta S. V. Reed c/o W. H. Forman. That you were not a payee on said checks. That La. R.S. 9:305 provides that when a court renders a judgment to make past due child support executory, the court shall award attorney's fees. The reason for the awarding of attorney's fees in such matters is so that the full amount of the past due child support is used for the benefit of the child. The court in Ms. Reed's case awarded an attorney's fee of $1,000.00. That you have claimed attorney's fees in the amount of $6,513.00 in this matter. That you have received military allotment checks dated February 13, 1989 in the amount of $261.75. March 1, 1989 in the amount of $261.75, April 3, 1989 in the amount of $261.75, May 1, 1989 in the amount of $523.50, June 1, 1989 in the amount of $523.50, July 3, 1989 in the amount of $523.50, and August 1, 1989 in the amount of $523.50. That said checks were received by you and deposited into an account under your control. That on June 28, 1989, you did issue to your client check in the amount of $1,099.35

> drawn on an account entitled William H. Forman, Jr. which is not an attorney trust account. That you did on or about July 3, 1989 and August 1, 1989 issue to your client, Henrietta Reed, checks in the amount of $314.10 payable on an account entitled William H. Forman, Jr. which is not an attorney trust account. That you have retained the difference in the sum total of the above detailed military allotment checks and the payments to the client as attorney's fees. That you have failed to promptly forward to your client the funds due and owing to your client; that you have commingled your client's funds with your own funds; that you have charged an unreasonable law fee; all in violation of Rules 1.5 (a), 1.15, and 8.4 (a) of the Rules of Professional Conduct of the Louisiana State Bar Association.

The reprimand became final by order of the Supreme Court and was issued on June 12, 1990. The specifics of the reprimand assert that Mr. Forman claimed an excessive fee and that he collected a substantial portion of the fee by taking the entire amount of the first three child support payments and part of the fourth received between February and June 1989.[2] Based on those facts, and the fact that Mr. Forman had not held the support payments in a trust account, the reprimand concluded that he had

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2. Mr. Forman in these proceedings has attacked the findings of the prior reprimand by moving for a new hearing in the prior proceeding. The disciplinary system has no authority to reopen a matter which has been fully adjudicated to a final decision by the Louisiana Supreme Court.

violated Rule 1.5(a) by charging an unreasonable fee, Rule 1.15 by failing to promptly forward the funds due and owing to his client and commingling those funds with his own, and Rule 8.4(a) (violating the Rules of Professional Conduct).

The conduct addressed in Count I in this proceeding began while the prior matter was still pending. The COPR's hearing on the fee issue was held on October 12, 1989. On November 7, 1989, Mr. Forman sent a letter to Mrs. Reed demanding $5,513 in fees (the original demand minus the court's award) and threatening suit for the balance. Although the demand letter did not apportion the fee between work for child support and other matters, the total included the $4,462.50 Mr. Forman claimed for working exclusively on the child support issue.[3]

At the time the demand letter was sent the COPR had not reached a decision on the charges that had been addressed in the investigative hearing held on October 12, 1989. Persisting in the demand for an excessive fee could have been viewed by the Committee as an aggravating factor in determining what discipline to impose or recommend in that matter. On November 22, 1989, both Mr. Forman and his counsel wrote to the committee withdrawing the demand letter. In addition, Mr. Forman "confirm[ed] withdrawal of any claim for fee that has been included in the prior adjudication of this matter." His lawyer disclaimed knowledge of the demand letter prior to its having been sent and asserted on Mr. Forman's behalf "that he did not intend to make a claim in excess of the fee adjudicated for his increase in child support payments." Thereafter, on March 30, 1990, the

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3. When Mr. Forman petitioned the district court for a fee award for the child support work, he submitted an affidavit asserting that he had worked 59 1/2 hours on the child support matter and requested $75 per hour.

committee notified Mr. Forman that it would issue the reprimand quoted above in this report. On April 12, 1990, Mr. Forman appealed the issuance of the reprimand to the Supreme Court, and on May 10, 1990, he filed suit against Mrs. Reed for $3,185.00, a sum which included, according to his hearing testimony, at least a part of what had been demanded in the "withdrawn" letter of November 7, 1990.

On March 25, 1990, 15 days after Mr. Forman sued Mrs. Reed, the Supreme Court affirmed the COPR's proposed reprimand. On June 7 Mr. Forman petitioned the court to stay the issuance of the reprimand; that petition was denied on June 11, and the reprimand was issued on June 12, 1990. On June 26 Mr. Forman applied for a rehearing on the petition to stay (notwithstanding the fact that the reprimand had already issued), which application the court denied on September 14, 1990. Mr. Forman then dismissed the suit against Mrs. Reed on October 16, 1990.

In considering this sequence of events the hearing committee concluded that Mr. Forman had not violated the rules specified in Count I, because he was simply attempting through appropriate legal process to collect a disputed fee and that he was entitled to do so until the disciplinary proceeding was finally adjudicated. That interpretation, however, overlooks the prior "withdrawal" of the demand for at least a portion of the amount sought in the suit.[4] Mr. Forman's contention that the "withdrawal" did not apply to work he attributes to issues other than child support would make his November 22, 1989, letter disingenuous, particularly in the context of an open investigative proceeding in which the Committee on Professional Responsibility could decide to impose

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4. The hearing committee did not comment on the demand letter and its putative withdrawal.

or recommend discipline. His selfish motivation is emphasized by his commingling of the support payment checks with his own funds and his taking $1,151.70 "off the top" by withholding virtually the entire amount of the first four checks received.

The board disagrees with the conclusion of the hearing committee that Mr. Forman's conduct did not violate Rule 3.1, which forbids a lawyer to bring claims in bad faith. It was wrong to threaten and file suit after purportedly withdrawing the demand to influence the disposition of the disciplinary proceeding. The board concludes that the totality of the circumstances of Mr. Forman's dealings with Mrs. Reed show an abundance of bad faith in continuing to assert his claim.

Count II charged Mr. Forman with failing to return stock certificates and other papers to his client, Mrs. Luitgardis Wright, documents she had delivered to him in connection with his handling the succession of her deceased husband. At the conclusion of the work Mr. Forman presented a bill to Mrs. Wright for $3,579.73, which was substantially more than Mrs. Wright believed had been agreed upon when she retained Mr. Forman to do the work. Mrs. Wright paid the amount she felt was due and refused to pay the balance.

On January 5, 1988, Mrs. Wright wrote to Mr. Forman requesting the return of the stock certificates and other documents. On January 18 respondent replied by letter that it was "customary" to return such property in person, asked that she have her attorney or representative contact him, and advised that a suit for the balance of the fee claim would be filed promptly.

On February 18, 1988, suit was filed by the Law Office of Bob C. Evans for the balance alleged to be due for attorneys' fees. Mr.

Forman was the attorney of record in that suit. Concurrently, a notice of privilege was filed by Robert Colin Evans in the 24th Judicial District Court against the property described in the judgment of possession in the succession of Mr. Wright. The notice was notarized by Mr. Forman.

Although in his testimony before the hearing committee Mr. Forman stated that the papers in question were not "under my direct control," that statement is inconsistent with the position he took in the January 18 letter and with his testimony in a deposition in the litigation concerning the fee. The documents eventually were returned to Mrs. Wright, but not until ten months or more following the initial demand for their return and then only after Mrs. Wright had sued Mr. Forman and his insurer for the improper withholding and for improperly placing a lien on her home. The hearing committee was fully justified in finding that Mr. Forman's failure to return the documents promptly violated Rules 1.15(b) and 1.16(d).

Based on its finding of a violation only on Count II, the hearing committee recommended another reprimand for Mr. Forman. The committee pointed out in its analysis that Mr. Forman was acting intentionally in withholding Mrs. Wright's documents, that his conduct caused both emotional and financial injury, and that it was part of a pattern of conduct resulting from selfish motives. The board concludes that the committee was correct in its analysis of Mr. Forman's conduct but disagrees that another reprimand is the appropriate discipline. As pointed out above, the board has also concluded that Mr. Forman was guilty of violating Rule 3.1 by bringing a claim in bad faith against Mrs. Reed, another instance of intentional conduct in which Mr. Forman's selfish motives overrode his duty to his client. The board believes that issuing another reprimand under these circumstances would

clearly be inadequate discipline. This respondent has repeatedly demonstrated a willingness to treat his clients as adversaries and to employ tactics to pursue his own interests in conflict with their interests. Therefore, the board recommends that Mr. Forman be suspended for three months as the next step necessary to protect the public from such behavior. The board further recommends that Mr. Forman be ordered to pay the costs of this proceeding.

Respectfully submitted:

DISCIPLINARY BOARD OF THE
LOUISIANA STATE BAR ASSOCIATION
Homer Ed Barousse, Jr.
Leo Robert Brammer, Jr.
Robert M. Contois, Jr.
Nils R. Douglas
Gregory F. Gambel
Orlando N. Hamilton, Jr.
Lila Tritico Hogan
Sibal Suarez Holt
T. Haller Jackson, III
Edmund McCollam — recused
Thomas W. Sanders — concurs with written reasons
Dr. Clifton R. Tennison
John J. Uhl

By: s/ Robert M. Coutois, Jr.
For the Board

Appendix C

DISCIPLINARY BOARD OF THE

LOUISIANA STATE BAR ASSOCIATION

NUMBER 91-DB-011

IN RE: WILLIAM H. FORMAN, JR.

CONCURRING OPINION

The undersigned respectfully concurs with the Board report and recommendation that Respondent, William H. Forman, Jr. be suspended from the practice of law for three (3) months and assessed with all costs.

Respondent's conduct merits sanction as to Counts I and II.

As to Count II, the evidence is overwhelming that Respondent's conduct appears to follow a pattern and Respondent had no legal, moral, or other right, to retain the property of complainant, his former client, who was an aged and infirm widow.

The undersigned adopts by reference, as if fully recopied herein, the position of Disciplinary Counsel as set forth in the initial brief, and as supplemented by the reply brief, as to the facts and circumstances giving rise to formal charges as embodied in Counts I and II.

Although concurring in the recommendation of a three month suspension I really believe that the conduct of Mr. Forman merits a suspension greater than three (3) months. When I initially reviewed this matter it was my judgment that he should be suspended for a period of at least one (1) year and one (1) day because of his egregious actions.

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s/ Thomas W. Sanders
THOMAS W. SANDERS
BOARD MEMBER

August 24, 1993

APPENDIX D — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISCIPLINARY BOARD OF THE LOUISIANA STATE BAR ASSOCIATION DATED OCTOBER 30, 1991

DISCIPLINARY BOARD OF THE
LOUISIANA STATE BAR ASSOCIATION

WILLIAM H. FORMAN, JR.

No.: 91-DB-011

Disciplinary Counsel charges the respondent, William H. Forman, Jr., of professional misconduct in connection with the following activities:

Count 1

On October 12, 1989 the Committee On Professional Responsibility held an investigatory hearing on specifications of misconduct, including charging an unreasonable law fee, arising from Henrietta Vallery Reed's complaint against you. On November 7, 1989 you sent Ms. Reed a demand letter attempting to collect the law fee in question. By separate letters dated November 22, 1989 both you and your attorney withdrew the November 7, 1989 demand letter and any claim to the fee involved. By letter dated March 30, 1990 you were advised that the Committee had concluded its consideration of the matter and intended to Publicly Reprimand you for misconduct including charging Ms. Reed an unreasonable law fee.

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On April 12, 1990 you appealed the Committee's decision to the Louisiana Supreme Court. On May 10, 1990 you filed suit against Ms. Reed seeking to collect a substantial portion of the law fee in question. The Court affirmed the Committee's decision to issue a Public Reprimand on May 25, 1990. On June 7, 1990 you filed, with the Louisiana Supreme Court, a Petition To Stay The Public Reprimand, which was denied on June 11, 1990. The Public Reprimand was issued on June 12, 1990 and included a finding that you charged Ms. Reed an unreasonable law fee. On June 26, 1990, after enrolling new counsel, you applied for a rehearing of your Petition to Stay, which was denied on September 14, 1990. Not until October 16, 1990 did you file a Motion and Order for Voluntary Dismissal Without Prejudice in your lawsuit against Ms. Reed. Your conduct in filing and pursuing the lawsuit against Ms. Reed violated Rules 3.1, 3.4(c), 4.4, and 8.4(a)(c)(d) of the Rules of Professional Conduct.

Count 2

In late 1986 or early 1987 you began representing Mrs. Lultgardis Marie Tell Wright in the matter of the succession of her late husband, Lewis Alfred Wright, who died on July 1, 1978. In early 1987 you received stock certificates and other papers from Mrs. Wright so that you could prepare the succession

documents. On November 6, 1987 the Judgment of Possession was signed by the Judge, placing Mrs. Wright in possession of the succession property, including the stock. A dispute developed over the amount of your bill for your law fee. By letter, erroneously dated January 5, 1987, but prepared on January 5, 1988, Mrs. Wright demanded that you return to her the stock certificates and other papers which she had previously entrusted to you. You failed to return the stock certificates and other papers to Mrs. Wright until late 1989 because of your disputed claim for law fees. Your failure to promptly return the stock certificates and other papers to Mrs. Wright because of your disputed bill for law fees violated Rules 1.15(b), 1.16(d), 3.1, 4.4, and 8.4(a)(c) of the Rules of Professional Conduct.

A hearing before Hearing Committee No. 11 was held at the offices of the Louisiana State Bar Association, New Orleans, Louisiana on July 24, 1991. The formal charges were separately considered by the Committee and will be addressed separately.

Findings of Fact of
Hearing Committee No. 11 with Respect to Count 1

By letter dated March 30, 1990, the Committee on Professional Responsibility, State of Louisiana, (hereinafter "COPR") advised William H. Forman, Jr. (hereinafter "Mr. Forman") that the COPR had concluded its consideration of the matter for misconduct including charging Ms. Reed an unreasonable law fee. The findings of the COPR with respect to

charging an unreasonable fee, as set forth in its March 30, 1990 letter, were as follows:

> "La.R.S. 9:305 provides that when a Court renders a judgment to make past due child support executory, the Court should award attorney's fees. The reason for the awarding of attorney's fees in such matters is so that the full amount of the past due child support is used for the benefit of the child. The Court in Ms. Reed's case awarded an attorney's fees of $1,000. That you claimed attorney's fees in the amount of $6,513.00 in this matter.

Based upon the above facts, the COPR found that "[Mr. Forman] charged an unreasonable law fee". Mr. Forman appealed the COPR's decision to the Louisiana Supreme Court on April 12, 1990 and on May 10, 1990 filed suit against Ms. Reed seeking to collect attorney fees. Mr. Forman's appeal and subsequent Petition to Stay the Public Reprimand were denied by the Louisiana Supreme Court and a Public Reprimand was issued on June 12, 1990. On June 26, 1990 Mr. Forman applied for rehearing of his Petition to Stay with the Louisiana Supreme Court. This rehearing application was denied on September 14, 1990 and on October 16, 1990 (approximately 32 days after all efforts to reverse the COPR's findings and stay the reprimand had been exhausted), Mr. Forman dismissed his suit for attorney fees against Ms. Reed.

In retrospect, although the March 30, 1990 letter of the COPR concluded that Mr. Forman had charged an unreasonable law fee, the COPR did not indicate whether all or only a portion of the fee charged by Mr. Forman in excess of $1,000 was unreasonable.

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The record from the Civil District Court, Parish of Orleans in the matter of *Joseph Vallery, Jr. v. Henrietta Smith Vallery,* Suit No. 77-4448 [Exhibit P-2] indicates that attorney fees of $1,000 with respect to the collection of child support was awarded on November 23, 1988. The memorandum submitted to the Court requesting attorney fees in connection with the award for back child support included a statement of time records of Mr. Forman for work through October 3, 1988 [Exhibit P-3]. The subsequent statement of Mr. Forman to Mrs. Henrietta Reed dated November 7, 1989 shows a sum for services rendered subsequent to October 3, 1988 and through March 7, 1989 in the amount of $2,418.00 [Exhibit P-I-B-(I)]. The statement of March 7, 1989 [Exhibit P-I-B(2)] shows approximately 24 hours additional time of work by Mr. Forman after November 22, 1988. The Petition of Mr. Forman [Exhibit P-3] alleges a claim for legal services against Ms. Reed at a rate of $70.00 an hour and indicates an amount owed of $3,185.00 without delineation as to the time or type of services rendered.

Mrs. Reed was not called by the prosecutor to testify to the legal fee arrangement she had with Mr. Forman. Mr. Forman testified on his own behalf that he had a $70.00 an hour fee agreement with Ms. Reed. Mr. Forman also testified, despite the fact that he could not delineate or otherwise segregate the attorney fee charges contained in his Petition as to the type of work performed, that the services for which he sued Ms. Reed did not include any time spent with respect to the child support award.

Conclusions of Committee No. 11
With Respect to Count I

Disciplinary Counsel contends that Mr. Forman's conduct violated the following rules:

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Rule 3.1 - Meritorious Claims and Contentions

> A lawyer shall not bring or defend a proceeding, or assert or controvert any issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant, in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

It is the conclusion of Hearing Committee No. 11 that Mr. Forman did not violate Rule 3.1. Disciplinary Counsel contends that the conduct of Mr. Forman in filing a Petition against Ms. Reed was the conduct which violated Rule 3.1. Whether or not COPR's ruling with respect to "unreasonable attorney fees" included all attorney fees or just those related to the child support issue, Hearing Committee No. 11 concludes that Mr. Forman had a right to continue to pursue his claim for attorney fees until such time as all avenues of appeal with respect to the COPR's decision of March 30, 1990 had been exhausted.[1] Accordingly, Hearing Committee No. 11 finds that Mr. Forman did not violate Rule 3.1.

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1. The COPR decision of March 30, 1990 finds that Mr. Forman's fee was unreasonable with respect to his efforts to obtain child support for Ms. Reed. However, the COPR did not make a finding as to the amount of fees which were charged for child support, nor that portion of the fee which was unreasonable. Hearing Committee No. 11 concludes that Mr. Forman had a right to pursue his claim for legal fees, whether reasonable or unreasonable, through the court system at least until such time as all efforts to reverse the ruling have been exhausted. Because of this

(Cont'd)

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Rule 3.4 - Fairness to Opposing Party and Counsel

A lawyer shall not:

(c) knowingly disobey an obligations under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

Hearing Committee No. 11 finds that Mr. Forman did not knowingly violate any obligations under the rules of a tribunal. The filing of a suit to recover attorney fees is not, per se, illegal or unethical. As concluded by Hearing Committee No. 11 with respect to Rule 3.1, Hearing Committee No. 11 concludes that Mr. Forman had a right to continue to pursue his claim for attorney fees through the court system, until such time as all avenues of appeal with respect to COPR's decision of March 30, 1990 had been exhausted. Accordingly, Hearing Committee No. 11 finds that Mr. Forman did not violate Rule 3.4.

Rule 4.4 - Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(Cont'd)
conclusion, Hearing Committee No. 11 does not reach a conclusion as to whether COPR's decision of March 30, 1990 pertains to all the fees charged by Mr. Forman to Ms. Reed or only to fees charged for obtaining the child support award. Hearing Committee No. 11 also reaches no opinion as to whether the suit filed by Mr. Forman included fees other than those charged in connection with the child support award.

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The Committee finds that Mr. Forman did not violate Rule 4.4 by filing suit against Ms. Reed. The suit had a legitimate purpose, i.e., a court determination as to the amount of fees owed to Forman by Ms. Reed. There was not evidence that the purpose of the suit was to "embarrass, delay or burden a third person, or use other methods of obtaining evidence that violate the legal rights of such a person". Hearing Committee No. 11 finds that Mr. Forman had a legitimate right to pursue his claim for attorney fees until such time as all appeals of the COPR's findings of March 30, 1990 had been exhausted.

Rule 8.4(a)(c)(d) - Misconduct

> It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) engage in conduct that is prejudicial to the administration of justice;

Hearing Committee No. 11 finds that the actions of Mr. Forman as alleged by the Disciplinary Committee did not violate the Rules of Professional Conduct, involve dishonesty, fraud, deceit or misrepresentation nor was his conduct prejudicial to the administration of justice.

Appendix D

Findings Of Fact of
Hearing Committee No. 11 with Respect to Count 2

Facts

Disciplinary Counsel charges that Mr. Forman failed to promptly return stock certificates and other documents to Mrs. Wright in violation of Rules 1.15(b), 1.16 (d), 3.1, 4.4 and 8.4(a)(c) of the Rules of Professional Conduct.

Mr. Forman was retained by Mrs. Wright in the matter of the succession of her late husband, Lewis Alfred Wright. In early 1987 he received stock certificates and other papers from Mrs. Wright so that he could prepare the succession documents. On November 6, 1987 the judgment of possession was signed by the judge, placing Mrs. Wright in possession of the succession property, including the stock. At the conclusion of the handling of this succession, Mr. Forman billed Mrs. Wright for his legal services. The amount of the bill was $3,579.73. Mrs. Wright testified that she had been previously told by the attorney associated with Mr. Forman, Robert Evans, that the succession would take between 20 and 30 hours to complete at an hourly rate of $80.00. Therefore, Mrs. Wright believed the total legal fees should have been in the neighborhood of $1,600 but no more than $2,400. Mrs. Wright paid $1,692.23 to Mr. Forman [an amount she considered reasonable for his fees plus costs], but refused to pay the remaining balance of the fees charged. The fee dispute and the reasonableness of the fees charged is not a matter before Hearing Committee No. 11.

Nonetheless, Disciplinary Counsel contends that it was this fee dispute which led to Mr. Forman's refusal to promptly return documents and property to Mrs. Wright.

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As the communications and contacts between Forman and Mrs. Wright occurred in the latter part of 1987 and the first part of 1988, (more than 3 1/2 years prior to this hearing) neither Mr. Forman, Mrs. Wright nor Mrs. Wright's attorney, Mr. Frank Sloan, could testify at the hearing with any certainty as to the number or context of any conversations between the parties regarding the documents. However, from the documents filed into evidence in this matter the following facts and chronology of events are clear.

On January 5, 1988, Mrs. Wright wrote to William Forman, certified mail, requesting the return of her stock certificates and other papers left with him [Exhibit P-8].

On January 18, 1988 Mr. Forman wrote Mrs. Wright in reply to her letter stating "it is customary to return such property in person. Have your attorney or representative contact me." The letter further stated "a lawsuit for the remainder of the fee will be brought against you this week."

On February 18, 1988 the law office of Bob C. Evans filed suit against Mrs. Wright for the balance of attorney fees owed, $1,887.50, in First Parish Court, Parish of Jefferson. The attorney of record was William H. Forman, Jr. [Exhibit P-5] In conjunction with the filing suit, a notice of privilege was filed by Robert Colin Evans with the Clerk of Court for the 24th Judicial District, Parish of Jefferson, against the property described in the judgment of possession in connection with the succession of Lewis Alfred Wright. The notice of privilege was notarized by William H. Forman, Jr.

On March 8, 1988, an exception of prematurity and a motion to stay proceedings was filed on behalf of Mrs. Wright by her attorney Frank Sloan. The exception of prematurity states that "in

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January of 1988 a formal complaint was filed with the Louisiana State Bar Association charging that Robert C. Evans and William H. Forman, Jr. had charged an excessive fee in the succession of Lewis Alfred Wright in contravention of the code of ethics and, further, that property belonging to Mrs. Wright was and has been wrongfully withheld by Messrs. Evans and Forman". [emphasis added]

On September 27, 1988 the deposition of William H. Forman, Jr. was taken in connection with the lawsuit by Robert Evans against Mrs. Wright for attorney fees. His testimony in the deposition at page 10 is as follows:

Q. Let me ask you about the documents you have in your possession. You have some stock certificates and other things in your possession for Mrs. Wright?

A. Yes.

Q. Are you prepared to turn those over today?

A. We've put an attachment on them.

On October 19, 1988 Mrs. Wright filed suit against William Forman and the Home Insurance Company.

Paragraph XVIII of the Petition for Damages states as follows:

> William H. Forman, Jr. further improperly refused to return to Mrs. Wright the stock certificates and the title to her car and improperly placed a lien upon her home.

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Although an exact date cannot be identified, some time after the filing of the petition for damages by Mrs. Wright, the documents were returned to Mrs. Wright by mail. None of the witnesses who testified at the hearing were able to state exactly how and by whom the documents were returned. However, it appears to have been at the recommendation of Mr. Forman's counsel representing him in the petition for damages filed by Mrs. Wright.

Mr. Forman urged at the hearing that he was not withholding the documents and as evidenced by his letter of January 18, 1988, the documents were available to be picked up by Mrs. Wright. [Transcript of the hearing at page 213 beginning with line 12.]

> Q. At the conclusion of your representation, you didn't return them [stocks and documents] to her automatically?
>
> A. What I wrote in this letter [of January 18, 1988] is what I meant, to have someone contact me to make it a personal transaction as opposed to just sending them by mail.
>
> Q. Well, the obligation was upon you to return them, not upon the client to come get them, isn't that correct?
>
> A. Well, you go into — you'd have grounds for additional billing, I think, if you would have to take them someplace.

However, it is also clear from his testimony, that Mr. Forman felt there was a valid privilege for attorney fees and that this

privilege on the stocks and documents was an exception to Rules 1.15 and 1.16 of the Professional Rules of Conduct, requiring the return of property and documents. [Transcript of hearing beginning at page 213 line 25:]

Q. Rule 1.16(d) requires you to surrender papers and property to which a client is entitled at the conclusion of the representation, doesn't it?

A. I have answered, mentioned Mr. Ours, that we, and when I'm saying that I'm talking about Mr. Evans and myself, thought that the privilege filed with the court on behalf of Mr. Evans, who took care of the billing, that everyone was acting and he was acting within the authority that I cited, R.S. 9, Section 5001.

[And again beginning on page 215 line 23:]

Q. The notice of privilege that you filed, you thought had a privilege under Title 9 of the Revised Statute?

A. That's what I reviewed. In addition to that, I read the cases, and again I repeat these papers weren't under my direct control. But I thought that, yes, Mr. Evans was acting in accordance with the law, and as I recall reading the rules that you're stating [rules of professional conduct], there is an exception, the exception being "as otherwise provided by law", or some statement like that.

Appendix D

Conclusions of Hearing Committee No. 11
With Respect to Count 2

Disciplinary Counsel charges that Mr. Forman's conduct violated Rule 1.15(b) and Rule 1.16(d), which provide as follows:

Rule 1.15 - Safekeeping Property

> (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall *promptly deliver* to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. [emphasis added]

Rule 1.16 - Declining or Terminating Representation

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, *surrendering papers and property* to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. [emphasis added]

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The Disciplinary Counsel also charges Mr. Forman with violation of Rules 3.1, 4.4 and 8.4(a)(c) of the Rules of Professional Conduct.

Rule 3.1 - Meritorious Claims and Contentions

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law . . .

Rule 4.4 - Respect for Rights of Third Persons

> In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.4(a)(c) - Misconduct

> It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Appendix D

With respect to the charges of violating Rules 1.15(b) and 1.16(d), Mr. Forman contends that by his letter of January 18, 1988 he satisfied his obligation under Rule 1.15 and 1.16 of the Professional Rules of Conduct by advising Mrs. Wright that it was customary to return such property in person, and to have her attorney or representative contact her.

With respect to Mr. Forman's contention that he satisfied his obligation under Rule 1.15 and 1.16 of the rules of professional conduct, Hearing Committee No. 11 notes that neither Rule 1.15 nor Rule 1.16 require the client to request such documents before the lawyer is obligated to "promptly deliver" or to "surrender" papers and property to which the client is entitled. Hearing Committee No. 11 also notes that the judgment of possession was entered on November 6, 1987 and as of January 8, 1988 (approximately 60 days later), Mr. Forman had yet to make an effort to return the documents or stocks to Mrs. Wright. While a letter such as Mr. Forman's dated January 18, 1988, (advising Mrs. Wright that documents are normally returned in person and advising Mrs. Wright to have her attorney or representative contact him) may generally be sufficient to satisfy an attorney's obligation under Rule 1.15 and 1.16 with respect to the return of documents, Hearing Committee No. 11 does not feel it was sufficient to release Mr. Forman of his continuing obligation to deliver and surrender papers and documents; particularly in light of the fact, that 30 days later there was an exception of prematurity filed on behalf of Mrs. Wright to the lawsuit filed by Mr. Forman wherein it is specifically alleged that documents were being wrongfully withheld. Despite this allegation, Mr. Forman did nothing for approximately six months to return Mrs. Wright's documents. The documents were only returned after suit was filed directly against Mr. Forman by Mrs. Wright alleging, among other things, the wrongful withholding of documents and property belonging to Mrs. Wright.

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Hearing Committee No. 11 concludes Mr. Forman's failure to return the documents was not merely an oversight but was in fact intentional upon the belief, however erroneous, that there was legitimate privilege on the documents and property pursuant to R.S. 9:5001 and that this privilege allowed the retaining of documents and property.

With respect to Count 2, the hearing Committee finds that Mr. Forman's actions violated the rules of professional conduct 1.15(b) and 1.16(d) by failing to promptly deliver to the client funds and other property that the client was entitled to receive and by failing to surrender papers and other property to which the client was entitled to receive. The Committee finds that Mr. Forman's actions did not violate the rules of professional conduct 3.1, 4.4 and 8.4(a)(c) as charged.

Recommended Discipline With Respect to
Misconduct Found With Respect to Count 2

The following factors were considered by Hearing Committee No. 11 in imposing sanctions for violations of rules of professional conduct 1.15(e) and 1.16(d).

While the *Standards for Imposing Lawyer Sanctions* do not directly address the sanctions to be applied for the failure of the lawyer to promptly deliver and/or surrender the property and/or documents to which the client is entitled, Hearing Committee No. 11 believes that the standards to apply for violations of duties owed to clients, and in particular, the failure to preserve the client's property would generally be applicable to Mr. Forman's violations. In recommending sanctions Hearing Committee No. 11 considered the following factors:

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(1) Whether the lawyer has violated a duty owed to the client, to the public, to the legal system or to the profession;

(2) Whether the lawyer acted intentionally, knowingly, or negligently;

(3) The amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) The existence of any aggravated or mitigating factors.

With respect to the first factor, the Committee finds that Mr. Forman's conduct violated his duty he owed to his client. With respect to the second factor, the Committee finds that Mr. Forman was acting intentionally in not returning the documents and property to his client. With respect to factor 3, the actual or potential injury caused by Mr. Forman's misconduct, Mrs. Wright testified at the hearing that the value of the stocks had reduced somewhat during the time that Mr. Forman held the stocks and that she was unable to sell a car because Mr. Forman had the title to the car. It was also apparent at the hearing that Mrs. Wright, a 74 year old widow who over the last few years was undergoing chemotherapy treatment for cancer, was distraught as a result of the disputes with Mr. Forman and her efforts to obtain the documents. However, when questioning Mrs. Wright's attorney, Mr. Sloan, it became obvious that between March of 1988 and October of 1988 (approximately six months) Mr. Sloan did nothing by way of legal proceedings to obtain the documents from Mr. Forman. The Hearing Committee would characterize the financial injury caused by Mr. Forman's actions as "slight".

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With respect to the fourth factor, mitigating or aggravating circumstances, the Committee finds the following aggravating factors. Mr. Forman previously received a private reprimand from the COPR, wherein the COPR found that on April 23, 1990 despite a conflict of interest Mr. Forman continued to represent his own interest, and as an attorney, that of his client and that he did so to the detriment of his client. Mr. Forman also received a public reprimand from the COPR on March 30, 1990 in connection with his representation of Ms. Reed, finding that he failed to promptly forward to his client funds due and owing to the client, that he co-mingled the client's funds with his own and that he charged unreasonable law fees. In both the prior violations which resulted in a private and public reprimand as well as the violations before this Hearing Committee, Mr. Forman appears to have placed his interest above that of his client. This appears to be a pattern of misconduct by Mr. Forman resulting from selfish motives as opposed to neglect. With respect to mitigating factors, Mr. Forman called numerous attorneys and businessmen to testify to his good character and integrity as well as his competence in law. However, the Disciplinary Counsel at no time suggested that Mr. Forman was incompetent or dishonest. The pattern of misconduct is rather one where Mr. Forman has sought to place his interest ahead of his obligations, under the Rules of Professional Conduct, to his client.

Therefore, while 4.14 of the *Standards for Imposing Lawyer Sanctions* would suggest that an admonition (private reprimand) would be appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to the client, because of the prior disciplinary offenses and pattern of misconduct in connection therewith, as well as the intentional nature of Mr. Forman's misconduct, Hearing Committee No. 11 recommends a public reprimand for violation of Rules 1.15(b) and Rule 1.16(d) with respect to Mr. Forman's failure to promptly

deliver and/or surrender the documents and other property of Mrs. Wright at the termination of his employment.

New Orleans, Louisiana, this 30th day of October, 1991.

HEARING COMMITTEE NO. 11

BY: s/ Peggy A. Leblanc
PEGGY A. LEBLANC, Chairperson

BY: s/ Celia Katz
CELIA KATZ, Lay Member

BY: s/ David L. Carrigee
DAVID L. CARRIGEE, Lawyer Member

APPENDIX E — FORMAL CHARGES OF THE OFFICE OF DISCIPLINARY COUNSEL OF THE LOUISIANA STATE BAR ASSOCIATION AGAINST MR. FORMAN, DATED MARCH 15, 1991

DISCIPLINARY BOARD OF THE LOUISIANA STATE BAR ASSOCIATION

'91-DB-011

IN RE: WILLIAM H. FORMAN, JR.

FORMAL CHARGES

Now comes The Office of Disciplinary Counsel, which states that:

Under the provisions of the Louisiana Supreme Court's Rules of Lawyer Disciplinary Enforcement, Section 11, the Office of Disciplinary Counsel herein notifies you that it is alleged that you have engaged in the following misconduct contrary to the Rules Of Professional Conduct.

I.

On October 12, 1989 the Committee On Professional Responsibility held an investigatory hearing on specifications of misconduct, including charging an unreasonable law fee, arising from Henrietta Vallery Reed's complaint against you. On November 7, 1989 you sent Ms. Reed a demand letter attempting to collect the law fee in question. By separate letters dated November 22, 1989, both you and your attorney withdrew the November 7, 1989 demand letter and any claim to the fee involved. By letter dated March 30, 1990 you were advised that the Committee had concluded its consideration of the matter and intended to Publicly

Appendix E

Reprimand you for misconduct including charging Ms. Reed an unreasonable law fee. On April 12, 1990 you appealed the Committee's decision to the Louisiana Supreme Court. On May 10, 1990 you filed suit against Ms. Reed seeking to collect a substantial portion of the law fee in question. The Court affirmed the Committee's decision to issue the Public Reprimand on May 25, 1990. On June 7, 1990 you filed, with the Louisiana Supreme Court, a Petition To Stay The Public Reprimand, which was denied on June 11, 1990. The Public Reprimand was issued on June 12, 1990 and included a finding that you charged Ms. Reed an unreasonable law fee. On June 26, 1990, after enrolling new counsel, you applied for a rehearing of your Petition To Stay, which was denied on September 14, 1990. Not until October 16, 1990 did you file a Motion And Order For Voluntary Dismissal Without Prejudice in your lawsuit against Ms. Reed. Your conduct in filing and pursuing the lawsuit against Ms. Reed violated Rules 3.1, 3.4(c), 4.4, and 8.4(a)(c)(d) of The Rules Of Professional Conduct.

II.

In late 1986 or early 1987 you began representing Mrs. Lultgardis Marie Tell Wright in the matter of the succession of her late husband, Lewis Alfred Wright, who died on July 1, 1978. In early 1987 you received stock certificates and other papers from Mrs. Wright so that you could prepare the succession documents. On November 6, 1987 the Judgement Of Possession was signed by the Judge, placing Mrs. Wright in possession of the Succession property, including the stock. A dispute developed over the amount of your bill for your law fee. By letter, erroneously dated January 5, 1987, but prepared on January 5, 1988, Mrs. Wright demanded that you return to her the stock certificates and other papers which she had previously entrusted to you. You failed to return the stock certificates and other papers to Mrs. Wright until late 1989 because

of your disputed claim for law fees. Your failure to promptly return the stock certificates and other papers to Mrs. Wright because of your disputed bill for law fees violated Rules 1.15(b), 1.16(d), 3.1, 4.4, and 8.4(a)(c) of The Rules Of Professional Conduct.

WHEREFORE, mover states that, pursuant to Rule XIX, section 11 B (3), hearing committee chair approved the filing of formal charges on February 28, 1991 and March 12, 1991. Further, mover states that the above alleged conduct, or any part thereof, if proven, merits the imposition of appropriate sanctions in accordance with Louisiana Supreme Court Rule XIX.

OFFICE OF DISCIPLINARY COUNSEL

BY: s/ G. Fred Ours
FRED OURS
DEPUTY DISCIPLINARY COUNSEL

March 15, 1991
DATE

APPENDIX F — LETTER OF PUBLIC REPRIMAND FROM THE COMMITTEE ON PROFESSIONAL RESPONSIBILITY OF THE LOUISIANA STATE BAR ASSOCIATION TO WILLIAM H. FORMAN,JR., DATED JUNE 12, 1990

DISCIPLINARY BOARD OF THE
LOUISIANA STATE BAR ASSOCIATION

601 Charles Avenue
New Orleans, Lousiana 70130
Fax (501) 522-5771 (504) 566-1600

June 12, 1990

CERTIFIED/RETURN RECEIPT REQUESTED

Mr. William H. Forman, Jr.
Attorney at Law
635 Gravier Street
Suite 637
New Orleans, Louisiana 70130

RE: PUBLIC REPRIMAND
COPR FILE NO. 10227-A

Dear Mr. Forman:

On March 30, 1990, the Committee on Professional Responsibility advised you that it had concluded its consideration of the complaint filed against you by Mrs. Henrietta Vallery Reed, and notified you of its intention to issue a Public Reprimand. The record reflects that your appeal has been denied. Accordingly, the Disciplinary Board of the Louisiana State Bar Association, successor to the Committee on Professional Responsibility, now

issues its reprimand. The Committee found and the Board finds as follows:

That in your capacity as Attorney at Law, you were retained to represent the interests of Henrietta Vallery Reed in a matter involving child support. That the client's former husband was a member of the United States Marine Corps. That during the course and scope of your representation, you did obtain judgment for past due child support. Payment of past due child support was forwarded to your office via United States Treasury checks made payable to the order of Henrietta S. V. Reed c/o W.H. Forman. That you were not a payee on said checks. That La. R.S. 9:305 provides that when a court renders a judgment to make past due child support executory, the court shall award attorney's fees. The reason for the awarding of attorney's fees. The reason for the awarding of attorney's fees in such matters is so that the full amount of the past due child support is used for the benefit of the child. The court in Ms. Reed's case awarded an attorney's fee of $1,000.00. That you have claimed attorney's fees in the amount of $6,513.00 in this matter. That you have received military allotment checks dated February 13, 1989 in the amount of $261.75. March 1, 1989 in the amount of $261.75, April 3, 1989 in the amount of $261.75, May 1, 1989 in the amount of $523.50, June 1, 1989 in the amount of $523.50, July 3, 1989 in the amount of $523.50, and August 1, 1989 in the amount of $523.50. That said checks were received by you and deposited into an account under your control. That on June 28, 1989, you did issue to your client check in the amount of $1,099.35 drawn on an account entitled William H. Forman, Jr. which is not an attorney trust account. That you did on or about July 3, 1989 and August 1, 1989 issue to your client, Henrietta Reed, checks in the amount of $314.10 payable on an account entitled William H. Forman, Jr. which is not an attorney trust account. That you have retained the difference in the sum total

of the above detailed military allotment checks and the payments to the client as attorney's fees. That you have failed to promptly forward to your client the funds due and owing to your client; that you have commingled your client's funds with your own funds; that you have charged an unreasonable law fee; all in violation of Rules 1.5 (a), 1.15, and 8.4 (a) of the Rules of Professional conduct of the Louisiana State Bar Association.

For the reasons stated above, you are hereby publicly reprimanded by the Disciplinary Board of the Louisiana State Bar Association, successor to the Committee on Professional Responsibility. Please be advised that this Public Reprimand is a part of your permanent record. This reprimand is public and will be made public in accordance with the provisions of Louisiana Supreme Court Rule XIX. You are urged to take steps to avoid the recurrence of a similar incident in the future.

DISCIPLINARY BOARD
OF THE LOUISIANA STATE BAR ASSOCIATION

BY: s/ G. Fred Ours
G. FRED OURS
ASSISTANT DISCIPLINARY COUNSEL

GFO/kmf

This Disciplinary Board is part of an agency established by the Supreme Court of Louisiana to administer the law system in the state.

APPENDIX G — RULES OF THE LOUISIANA STATE BAR ASSOCIATION'S RULES OF PROFESSIONAL CONDUCT

Rule 1.15. Safekeeping property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a bank or similar institution to the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to

be held for a short period of time in compliance with the following provisions:

(1) No earnings from such an account shall be made available to a lawyer or firm.

(2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time.

(3) An interest-bearing trust account shall be established with any bank or savings and loan association or credit union authorized by federal or state law to do business in Louisiana and insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors.

(5) Lawyers or law firms depositing client funds in a trust savings account shall direct the depository institution:

A. To remit interest or dividend, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

B. To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

C. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

Amended Dec. 13, 1990, eff. Jan. 1, 1991

Rule 1.16. Declining or terminating representation

(a) Except as stated in Paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the rules of professional conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in Paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) The client has used the lawyer's services to perpetrate a crime or fraud;

(3) A client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) Other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 3.1. Meritorious claims and contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that

could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(2)

Supreme Court, U.S.
FILED
AUG 31 1994
OFFICE OF THE CLERK

No. 94-250

In The

Supreme Court of the United States

October Term, 1994

IN RE: WILLIAM H. FORMAN, JR.

Petition for a Writ of Certiorari to the
Supreme Court of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

G. Fred Ours
Deputy Disciplinary Counsel
Counsel of Record

John T. Seale
Chief Disciplinary Counsel

601 St. Charles Avenue
New Orleans, Louisiana 70130
Phone: (504) 523-1414

Attorneys for Respondent

BEST AVAILABLE COPY

30 pp

QUESTION PRESENTED FOR REVIEW

Respondent submits that the real issues for review are as follows:

1) Whether this Court should disturb the State's fact finding in a June 12, 1990 Public Reprimand where Mr. Forman failed to seek timely redress.

2) Whether disciplining a lawyer for filing a meritless and harassing lawsuit in bad faith deprives the lawyer of his right to access to the Courts under the Constitution of the State of Louisiana and/or the United States Constitution.

3) Whether this Court should reverse the facts found by the state disciplinary agency and state Supreme Court.

4) Whether this Court should reverse the interpretation of a state statute made by the state Supreme Court.

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CITATIONS OF OPINIONS AND JUDGMENTS BELOW

The decisions of the Louisiana Supreme Court, the Report of the Disciplinary Board to the Louisiana Supreme Court, the Report of Hearing Committee No. 11 to the Disciplinary Board, and the Formal Charges filed against Mr. Forman are contained in the appendices, Petition for Writ of Certiorari, designated Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E respectively.

INTRODUCTION

Mr. Forman is dissatisfied with the decision of the Supreme Court of Louisiana suspending him from the practice of law for six months for two separate instances

of misconduct. While cloaking his arguments in the garb of constitutional rights, Mr. Forman basically seeks to have this Court reverse the fact finding of the State Disciplinary Agency and the State Supreme Court, and to interpret a state statute in a manner inconsistent with the decision of the State Supreme Court. Respondent suggests that the petition is flawed both factually and legally. Respondent herein respectfully responds to Mr. Forman's contentions and requests that the Petition For Writ Certiorari be denied.

STATEMENT OF THE CASE

In late 1987 or early 1988, Mr. Forman wrongfully retained property belonging his client, Ms. Wright, and used

that property as leverage to attempt to settle a fee dispute with Ms. Wright. Mr. Forman asserted a bogus privilege or lien in order to wrongfully hold his client's property hostage.

On March 30, 1990, the Committee on Professional Responsibility (hereinafter COPR) advised Mr. Forman that it intended to publicly reprimand him for misconduct, including charging a client, Ms. Reed, an excessive fee. Mr. Forman appealed to the Louisiana Supreme Court, which affirmed the decision. The Reprimand issued on June 12, 1990. Mr. Forman filed extensive pleadings with the Louisiana Supreme Court, attempting to cancel the Reprimand and/or cause it to remain unpublished. He was unsuccessful, and did not seek writs to this Court. In May of 1990, after the notice of intent to issue a Public

Reprimand, but prior to its June 12, 1990 issuance, Mr. Forman sued Ms. Reed for attorney's fees plus damages.

Formal Charges, two counts, were filed on March 15, 1991. Hearing was held on July 24, 1991 in New Orleans. Hearing Committee No. 11's November 15, 1991 Report found Mr. Forman not guilty in Count I, guilty in Count II, and recommended a reprimand.

The Disciplinary Board considered briefs and oral arguments. Their August 31, 1993 Report found Mr. Forman guilty of misconduct in both counts and recommended a three month suspension.

The Louisiana Supreme Court also considered briefs and oral arguments on Mr. Forman's objections to the Board's Report, and Disciplinary Counsel's objection to the insufficiency of the

recommended sanction. The Louisiana Supreme Court, on March 18, 1994, held that Mr. Forman was guilty of two counts of misconduct: (1) filing a suit in bad faith against a former client to collect a partial fee, after withdrawing his demand for the fee when the COPR had ruled that the fee was excessive; and (2) failing to return another client's papers and stocks when the client refused to pay more than the originally quoted fee, using the client's property as leverage in the fee dispute, and returning them only after the client sued. Application for rehearing was denied, and Mr. Forman applied for the writs to this Honorable Court.

SUMMARY OF ARGUMENT

I. COUNT I (Ms. Reed)

Mr. Forman complains that the June 12, 1990 Public Reprimand by the COPR (Appendix C, pp.6a and 7a of Mr. Forman's petition) is vague. Mr. Forman extensively, and unsuccessfully, litigated the issuance of the Public Reprimand before the Louisiana Supreme Court in 1990. He did not then seek review by this Court. Mr. Forman now wishes to have this Court review the 1990 Public Reprimand. His request is untimely, U.S. Supreme Court Rule 13.1. The facts set forth by Mr. Forman are incomplete and incorrect. Mr. Forman's memorandum and sworn affidavit, filed in the child support proceeding, state that all of the time was spent on the child support issue. Mr. Forman and his counsel in the COPR

proceeding filed letters withdrawing the demand for fees from Ms. Reed, prior to the decision to issue a Public Reprimand. Mr. Forman in effect argues that to discipline him for filing a harassing lawsuit in bad faith deprives him of his constitutional right of access to the courts. Neither the Louisiana nor the Federal Constitution provide anyone with a right to file lawsuits in bad faith in order to harass or intimidate another person. Redress of grievances and harassment are not synonyms.

II. COUNT II (Ms. Wright)

The facts set forth by Mr. Forman are incomplete and inaccurate. Ms. Wright entrusted stock certificates and other papers to Mr. Forman for use in preparing pleadings in her late husband's succession

Mr. Forman charged Ms. Wright about twice the fee that he had told her he would charge. When she refused to pay the double fee, Mr. Forman refused to return her papers. He argued that a state statute gave him a lien on Ms. Wright's papers. That statute is not applicable to these facts. The Louisiana Supreme Court was not impressed with Mr. Forman's urging of this bogus lien, and did not interpret the statute the way Mr. Forman desired. Mr. Forman inappropriately seeks a more favorable interpretation of the state's statute from this Court.

ARGUMENT

I. COUNT I (Ms. Reed)

The Public Reprimand was issued on June 12, 1990. Mr. Forman extensively

litigated the question of the appropriateness of that reprimand and its publication, in the Louisiana Supreme Court in 1990. He did not seek writs from this Court at that time. U.S. Supreme Court Rule 13.1 provides a ninety day period, from the finality of a State Supreme Court decision, for one to seek writs of certiorari. The ninety day period has long since past. Mr. Forman nonetheless seeks to have this Court review the facts found in that matter. It is suggested that it would be inappropriate for this Court to engage in fact finding in a State disciplinary case wherein the facts have been adjudicated by the State Supreme Court's disciplinary system, particularly when, as here, a lawyer was given a full opportunity to present evidence and to further litigate

the matter on appeal. If Mr. Forman thought that the COPR opinion was vague, he should have sought relief from this Court in a timely fashion. He did not do so. Furthermore, given the close time proximity of the Public Reprimand and the harassing lawsuit, it cannot be reasonably argued that Mr. Forman did not know of the significance of one to the other.

The facts presented in Mr. Forman's Petition for writs are incomplete and inaccurate.

Mr. Forman sued Ms. Reed for fees after being advised by the COPR that they intended to Publicly Reprimand him for, among other findings, charging Ms. Reed an excessive fee. The text of the Public Reprimand is contained in Appendix C, pp.6a and 7a of Mr. Forman's petition.

On March 30, 1990, the COPR notified

Mr. Forman of its intent to issue a Public Reprimand. He appealed. The Public Reprimand was affirmed by the Louisiana Supreme Court, and was issued on June 12, 1990. In May of 1990, after the notice of intent to issue a Public Reprimand, but prior to its issuance, Mr. Forman sued Ms. Reed for $3,185.00 in fees, plus damages for his loss of earnings due to the time spent pursuing his claim against her for fees. Mr. Forman engaged in subsequent unsuccessful attempts to cancel the Public Reprimand.

Mr. Forman was awarded $1,000.00 in attorney's fees by the trial court in Ms. Reed's past due child support matter. at one time he claimed fees of $6,513.00. The checks for the past due child support and the fee total $2,879.25 ($1,879.25 in past due support). Charging a needy client

BEST AVAILABLE COPY

$6,513.00 in attorney's fees to collect $1,879.25 in past due child support is unreasonable.

On October 13, 1988, Mr. Forman submitted his memorandum for attorney's fees in the past due child support matter to the trial court. The memorandum and accompanying affidavit clearly establish that he sought attorney's fees only for his efforts in the past due child support matter. Mr. Forman's affidavit states that the records he attaches " . . . show the time that he actually spent in connection with said cause of action", referring to the past due child support matter. The records list 59 1/2 hours at $75.00 an hour ($4,462.50) claimed as fees in the past due child support matter. The trial court determined that $1,000.00 was a reasonable attorney's fee.

On November 7, 1989, after the COPR hearing on the excessive fee issue, but prior to the COPR's decision, Mr. Forman sent a demand letter to Ms. Reed demanding $6,513.00 in fees, with credit for the $1,000.00 awarded by the trial court, and stating that he was prepared to sue for $5,513.00. The demand included the $4,462.50 submitted in Mr. Forman's memorandum and affidavit to the trial court, plus $2,050.50 in charges allegedly incurred after October 3, 1988.

On November 22, 1989 both Mr. Forman and his attorney sent letters to the COPR withdrawing the demand letter. Mr. Forman's letter contains these statements:

> With reference to your file no. 10227-A, all demand letters to Mrs. Henrietta V. Reed are hereby withdrawn;

and,

> I do confirm withdrawal of any claim for fee that has been included in the prior

adjudication of this matter.

Mr. Forman's lawyer's letter contains this statement:

> I learned yesterday that another letter from the captioned had been mailed to the former client regarding his claim for attorney's fees. I knew nothing of this demand, and on conferring with Mr. Forman, he acknowledged that he did not intend to make claim in excess of the fee adjudicated for his increase in child support payments. His letter to that effect is to confirm his withdrawal of any additional claim for that work.

It is obvious that Mr. Forman was withdrawing any claim for the fees demanded in the November 7, 1989 letter. Mr. Forman clearly told the COPR, which was then considering its decision on the fee issue, that he was abandoning his pursuit of these fees.

Six months later, in May of 1990, after the notice of intent to issue a

Public Reprimand, but prior to its issuance, Mr. Forman sued Ms. Reed for $3,185.00 in fees, plus damages for his loss of earnings due to the time spent pursuing his claim for fees. Mr. Forman testified that he was suing Ms. Reed for fees included in his November 7, 1989 demand letter. It is suggested that suing a client for $3,185.00 in fees in a case where the client received only $1,879.25 in past due child support is unreasonable. The facts that Mr. Forman had already collected the court awarded $1,000.00 fee; had submitted a written withdrawal of all claim to the fees while the COPR was considering the disposition of misconduct involving the fees claimed; and sued to enforce his abandoned claim after the COPR decided the matter, make the suit gross misconduct. It was frivolous and harassing

for Mr. Forman to sue to recover loss of earnings occasioned by the time required for him to pursue a lawsuit for an unreasonable fee which he had already waived.

Mr. Forman's defense was that he sued for the time spent on the community property matter, not the child support matter. His sworn affidavit and memorandum are clearly antithetical to his purported defense, as are the two November 22, 1989 letters to the COPR withdrawing the November 7, 1989 demand. To credit Forman's defense one must conclude that his affidavit and memorandum to the trial court contained statements known to be untrue when made, and that the letters of November 22, 1989 were artfully designed to mislead the COPR in its consideration of allegations of misconduct against him.

His defense merited no credence.

Hearing Committee No. 11's conclusion, that it was proper for Mr. Forman to maintain the suit against Ms. Reed until his appeals from the COPR's decision were completed, both begged and ignored the question. The Board's Report corrected that error. Mr. Forman waived the fees he later sued to collect. He should not have filed the suit for that reason alone. Further, he sued after he was notified of the COPR's intention to issue a Public Reprimand, in part for charging Ms. Reed an unreasonable fee. The proper thing to do was await the conclusion of his appeals prior to even considering filing suit to enforce the abandoned fee claim. There was no question of prescription or any other basis to sue Ms. Reed, other than to harass her. He

filed the suit at his peril in clear violation of Rules 3.1, 3.4(c), 4.4, and 8.4(a)(c)(d) of the Louisiana Rules of Professional Conduct.

Mr. Forman does not have a constitutional right to file harassing lawsuits in bad faith in order to harass or intimidate former clients. Mr. Forman confuses bad faith harassment with the proper redress of grievances. The two are not synonymous.

II. COUNT II (Ms. Wright)

The facts stated by Mr. Forman in his application for writs are incomplete and inaccurate.

Mr. Forman improperly refused to return stock certificates and other papers belonging to a client in an attempt to collect a fee that the client considered

to be excessive.

Ms. Wright retained Mr. Forman to handle the succession of her late husband. In early 1987, she gave Mr. Forman stock certificates and other papers to be used to prepare the succession documents. The November 6, 1987 judgment placed Ms. Wright in possession of the succession property, including the stock. Mr. Forman's bill was $3,579.73. Ms. Wright had previously been told that the succession would take about 20 hours at $80.00 an hour ($1,600.00). Accordingly, she paid Mr. Forman $1,692.23, and refused to pay the remainder of his bill. On January 5, 1988, Ms. Wright wrote to Mr. Forman requesting the return of her stock certificates and other papers. On January 18, 1988, Mr. Forman replied that it was customary for such property to be returned

in person and that a lawsuit for the rest of the fee would be filed. On February 18, 1988, Mr. Forman sued Ms. Wright for $1,887.50. A "notice of privilege" notarized by Mr. Forman, was filed with the clerk of court. On March 8, 1988, a pleading was filed by Ms. Wright's attorney noting that Mr. Forman had wrongfully withheld her property. In a September 27, 1988 deposition, Mr. Forman testified:

> Q. Let me ask you about the documents you have in your possession. You have some stock certificates and other things in your possession for Mrs. Wright?
> A. Yes.
> Q. Are you prepared to turn those over today?
> A. We've put an attachment on them.

On October 19, 1988, Ms. Wright sued Mr. Forman alleging in part that he improperly refused to return her stock certificates

and car title and improperly placed a lien upon her home. Subsequently, the documents were returned to Ms. Wright by mail.

Mr. Forman contended that his letter of January 18, 1988 satisfied his obligations under Rule 1.15 and 1.16. Hearing Committee No. 11 correctly held that the Rules do not require the client to request their documents, that Mr. Forman was obligated to promptly deliver them to Ms. Wright. While the judgment of possession was entered on November 6, 1987, Mr. Forman had not returned the documents or stocks to Ms. Wright as of January 18, 1988. Mr. Forman's failure to return the documents was intentional.

Mr. Forman improperly asserted a right to possession and dominion over Ms. Wright's property as a means to further his position in the fee dispute. A lawyer

cannot hold his client's property hostage in order to win a fee dispute. Such conduct serves no substantial purpose other than to harass or burden and is a violation of Rules 3.1 and 4.4. It was also dishonest for Mr. Forman to assert a bogus privilege in order to hold his client's property hostage, a violation of Rule 8.4(c).

The statute relied upon Mr. Forman to establish his bogus lien is LSA-R.S. 9:5001 which, at the applicable time stated: "A special privilege is hereby granted to attorneys at law for the amount of their professional fees on all judgments obtained by them, and on the property recovered thereby, either as plaintiff or defendant, to take rank as a first privilege thereon." The statute permits an attorney to secure his

contingent or other fee from the proceeds of a lawsuit. The facts in this case clearly establish that the property which Mr. Forman received from his client, the stock certificates and other papers belonging to the client, were not "property recovered" by any litigation or any judgment against any adverse party. Similarly, the statute does not grant Mr. Forman any right to file a lien upon the immovable property (real estate) of his client. Mr. Forman was charged with failing to return to his client his client's property, not the fee portion of litigation proceeds.

Mr. Forman unsuccessfully argued his interpretation of LSA-R.S. 9:5001, that it covered the property in question, to the Louisiana Supreme Court. The Louisiana Supreme Court decision does not support

Mr. Forman's interpretation. While a discussion of the Louisiana Civil Code provisions on successions, particularly seizin and related concepts, might be informative, the issue clearly is a matter of interpreting a state statute. Mr. Forman basically argues that the Louisiana Supreme Court has misinterpreted Louisiana law. He wishes to have this Court reinterpret state law in his favor. It is suggested that it is inappropriate for this Court to do so under the "Erie doctrine" and related cases. Mr. Forman argues that other states have a statute which accomplishes Mr. Forman's purpose. The fact that another state, or states, have a statute which accomplishes this, does not require the State of Louisiana to adopt such a statute. It does not require the Louisiana Supreme Court to interpret

the statutes of Louisiana in Mr. Forman's favor. The State of Louisiana is clearly entitled to determine what its own statutes mean, via interpretation by the Supreme Court of Louisiana, independent of Mr. Forman's wishes.

CONCLUSION

There is nothing in the petition sub judice requiring this Court's attention. There is no conflict among the circuits, there is no Federal question, no Federal Statute interpreted, and, no proper constitutional question presented. The facts asserted by Mr. Forman are incomplete and inaccurate. The issues raised by Mr. Forman involve the fact finding and interpretation of state law by

the Louisiana Supreme Court and its disciplinary system. Mr. Forman's petition is devoid of merit and should be denied.

Respectfully submitted,

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